

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

Crl.Rev.Pet.No. 6 of 2007(A)

CRA.6/2006 of SESSIONS COURT, PALAKKAD
ST.977/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PALAKKAD
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REVN. PETITIONER: APPELLANT/ACCUSED

K.R.MANOJ KUMAR, AGED 31 YEARS,
S/O. K.V.RAJAN, KALLAMPARAMBU,
KINAVALLUR, PARALI, PALAKKAD TALUK.

BY ADV. SRI.K.ANAND

RESPONDENTS: RESPONDENTS/STATE & COMPLAINANT

1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.
2. N.JANARDHANAN, S/O. GOVINDANKUTTY NAIR,
PADMALAYAM, EDATHARA, PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SRI.KAMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.R.P.No.6 of 2007

Dated this the 22nd day of January 2007

O R D E R

This revision petition is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution under Section 138 of the Negotiable Instruments Act.

2. The cheque is for an amount of Rs.80,000/-. It bears the date 21/08/2004. It is revealed that there was an earlier prosecution and it is in settlement of the said prosecution that the cheque was issued. The complainant examined himself as PW1 and proved Exts.P1 to P7. The accused did not adduce any evidence oral or documentary.

3. The courts below, in these circumstances, concurrently came to the conclusion that the complainant has succeeded in establishing all the ingredients of the offence punishable under Section 138 of the N.I Act. Accordingly they proceeded to pass the impugned concurrent judgments.

4. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner

only prays that a reasonable further time may be granted to the petitioner to pay the amount of compensation. He further prays that the substantive sentence of imprisonment may be set aside.

5. I am satisfied that the verdict of guilty and conviction do not warrant any interference. The verdict of guilty and conviction are found to be absolutely justified and unexceptionable. At any rate, In the absence of challenge on any specific grounds, it is not necessary for me to advert to facts in any greater detail in this order.

6. Coming to the question of sentence, I take note that there was the reason that the petitioner had issued this cheque in settlement of the claim made in an earlier prosecution. That circumstance is indeed relevant and crucial.

7. The learned counsel for the petitioner prays that, at any rate, leniency may be shown on the question of sentence. The petitioner is facing grave financial difficulties. He has sold his properties. He is trying desperately to raise the amounts and pay the amounts due to the respondent/complainant. In these circumstances, this court may show maximum leniency, it is prayed. I have already adverted to the principles governing

imposition of sentence in a prosecution under Section 138 of the N.I.Act in the decision reported in **Anilkumar vs.Shammi** [2002 (3)KLT 852]. I do take note of the fact that the cheque in this case is issued for the due discharge of an admitted liability and the cheque was issued when the earlier prosecution was settled between the parties. Even then, I am satisfied that it is not necessary to insist on imposition of a deterrent substantive sentence of imprisonment. In the facts and circumstances of the case, leniency can be shown only subject to the compulsion of adequately and fairly compensating the victim/complainant. In the nature of the relief which I propose to grant, it is not necessary to wait for issue and return of notice to the respondent. Reasonable further time can also be granted to the petitioner to discharge the liability and avoid the default sentence.

8. In the result:

- a) This revision petition is allowed in part.
- b) The impugned verdict of guilty and conviction of the petitioner under Section 138 of the N.I.Act are upheld.
- c) But the sentence imposed is modified and reduced. In

supersession of the sentence imposed on the petitioner by the courts below, he is sentenced to undergo imprisonment till rising of court. He is further directed under Section 357(3) Cr.P.C to pay an amount of Rs.1,00,000/- (Rupees one lakh only) as compensation and in default, to undergo S.I for a period of three months. If realised, the entire amount shall be released to the complainant as compensation.

9. The petitioner shall have time till 28/02/2007 to pay the amount and avoid the default sentence. The impugned sentence shall not be executed till that date. If the petitioner does not appear before the learned Magistrate on or before that date, the learned Magistrate shall thereafter proceed to execute the modified sentence hereby imposed.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006